(e) The words of the statute are plain and unambiguous and there is no occasion to go to the committee reports to ascertain their meaning but in the event the committee reports are resorted to, they themselves show there was no intention on the part of Congress to make the words "or otherwise" all inclusive.

(f) To hold that the words "or otherwise" are all inclusive and intended to cover any purpose for which a kidnapped person is held, it would be necessary to expunge the words "ransom or reward" as meaningless and surplusage in direct contravention of the rule that all words of a statute are to be given a meaning if possible.

(g) Before a person may be convicted under a penal law his act must come plainly and unmistakably within the statute.

(h) When Gooch carried the officers into Oklahoma he can no longer be said to have held the officers for the purpose of preventing his arrest at Paris in the State of Texas.

ARGUMENT.

As stated before this case comes to this Court by virtue of the action of the Circuit Court of Appeals for the Tenth Circuit in certifying two questions to this Court as follows:

1. Is holding an officer to avoid arrest within the meaning of the phrase, "held for ransom or reward or otherwise" in the act of June 22, 1932, as amended May 18, 1934 (48 St. 781), 18 U. S. C. A. 408a?

2. Is it an offense under section 408a, *supra,* to kidnap and transport a person in interstate commerce for the purpose of preventing the arrest of the kidnapper?

It will be immediately noted that these two questions in effect involve the same proposition and they will be considered and argued together under the following

Proposition.

IT IS NOT AN OFFENSE UNDER THE ACT OF JUNE 22, 1932, AS AMENDED MAY 18, 1934, (48 ST. 781) 18 U. S. C. A. 408A TO KIDNAP AND TRANSPORT A PERSON IN INTERSTATE COMMERCE FOR THE PURPOSE OF PREVENTING THE ARREST OF THE KIDNAPPER FOR THE REASON THAT SUCH PURPOSE IS NOT INCLUDED IN NOR CONTEMPLATED BY THE PHRASE OF SUCH ACT "HELD FOR RANSOM OR REWARD OR OTHERWISE."

The pertinent part of the statute herein involved reads as follows:

> "Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine. * * *"

The above act was an amendment to the Act of June 22, 1932 (c. 271, Sec. 1, 47 Stat. 326), which was commonly known and designated as the Lindbergh kidnapping law. The original act made no provision for the imposition of the death penalty. The original act further provided that the kidnapped person must be held for *ransom or reward.* The amended act added the words "or otherwise" after

the words "ransom or reward" in the original act and permits the imposition of the death penalty where the kidnapped person is harmed.

We have noted that the charging part of the indictment returned in this case alleges that the officers were kidnapped and transported into *Oklahoma* for the purpose of preventing the arrest of Arthur Gooch at *Paris, in the State of Texas.* We have further noted that the statute involved in this case states that to constitute an offense under same, that in addition to transporting the kidnapped person in interstate or foreign commerce, said kidnapped person must have been held for "ransom or reward or otherwise."

It must be conceded that the officers mentioned in the certified questions were not held after having been kidnapped for ransom or reward. The indictment charges that they were kidnapped and held to prevent an arrest of the kidnapper in the State of Texas. With this premise before us the issues immediately come to the surface.

It necessarily follows that appellee must urge, in order to sustain the judgment rendered in this case, that the general terms "or otherwise" following the specific terms of the statute *ransom or reward* is all inclusive and brings this case within the scope of the statute under which the prosecution is proceeding. It is the contention of the appellant herein that the facts alleged in the indictment, that is, the kidnapping of the officers in order to prevent the arrest of Gooch and Nix does not bring this case within the statute involved. We earnestly contend that the term "or otherwise" is used in its restricted sense in accordance with the familiar rule of *ejusdem generis.* As the principles that are involved in the construction of criminal statutes are intertwined with the authorities setting forth the application of the rule *ejusdem generis* we wish to preface our argument by a few brief excerpts from the opinions of this Court in regard to the construction of criminal statutes.

Almost from the beginning of our government we find our courts speaking in one accord with reference to the construction of penal laws. In the case of *United States* v. *Wiltberger*, 5 Wheat. 76, 79, 5 L. Ed. 37, 42, Chief Justice Marshall delivering the opinion of the Court spoke as follows:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principles that the power of punishment is vested in the legislature and not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment. *To determine that an action is within the intention of the statute, its language must authorize us to say so. It would be dangerous indeed to carry the principle that a case which is within the reason or mischief of a statute is within its provisions so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of kindred character with those which are enumerated.* If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation which it would be unsafe to consider as precedents forming a general rule for other cases." (Italics ours.)

> "There are no constructive offenses, and before one can be punished it must be shown that his case is plainly within the statute" *Fasulo* v. *United States*, 272 U. S. 620.

And in *Harrison* v. *Vose*, 9 Howard, 372, 378 this Court said:

> "In the construction of penal statutes, it is well settled that all reasonable doubts concerning their meaning ought to operate in favor of the respondents."

This rule in regard to the construction of criminal statutes is so well settled that we do not deem it neces-

sary to cite further authorities on the proposition especially as many of the cases we cite upon the application of the rule of *ejusdem generis* also involve the construction of criminal statutes.

With the above rule in regard to the construction of penal laws in mind we assert that upon the application of the rule of *ejusdem generis* to the words "or otherwise" the indictment returned in this case must fall as it alleges no offense within the context of the statute here involved or contemplated by the legislative body that brought the statute into existence.

Corpus Juris, vol. 59, pages 981, 982 well states the rule.

> "By the rule of construction known as *ejusdem generis,* where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. And this rule has been especially applicable to penal statutes. The rule expressed is for the obvious reason that if the legislature had intended the general words to be used in their unrestricted sense they would have made no mention of the particular classes."

The Supreme Court of Oklahoma in the case of *Board of Com's'rs* v. *Grimes,* 182 Pac. 897, 75 Okla. 210, said:

> "General words do not sustain or amplify particular terms preceding them, but are themselves restricted and explained by the particular terms."

The words "or otherwise" is defined in Words and Phrases, vol. 3, page 830 (2nd series) as follows:

> "The words 'or otherwise' in law when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense,

> as referring to such other matters as are kindred to the classes before mentioned, receiving an *ejusdem generis* interpretation."

Can it be said that the holding of the officers "for the purpose of preventing his arrest" makes Gooch guilty under the phrase "and held for ransom or reward or otherwise"? Can this purpose possibly be read to mean that it is kindred or of like nature with ransom or reward? The two elements have nothing in common with each other. They are totally unrelated. If the words "or otherwise" are to be given an all inclusive meaning as contended by the appellee and are to be read to embrace any purpose for which a kidnapped person is held then the words ransom or reward must be held to be meaningless and surplusage in direct contravention of the general principle of construction that all words of a statute must be given effect if possible.

This Court had occasion to pass on the meaning of the words "or otherwise" in the case of *Huguley Manufacturing Co.* v. *Galeton Cotton Mills,* 184 U. S. 290, 46 L. Ed. 546. The first paragraph of the sylabi states the facts:

> 1. No right of appeal from a decree of the circuit court of appeals, which is made final by the act of Congress of March 3, 1891, chap. 517, sec. 6 (26 Stat. at L. 826) is given by the provision of that section that such case may be brought to the United States Supreme Court "by certiorari or otherwise," as, if some other order or writ may be resorted to, it must be *ejusdem generis* with certiorari.

Mr. Chief Justice Fuller delivered the opinion of the Court and in the course of the opinion said:

> "The question before us is whether this appeal was properly granted and can be maintained. In all cases where the decree or judgment of the circuit court of

> appeals is made final by the statute, an appeal does not lie, but any such case may be brought here 'by certiorari or otherwise.' The *latter words* add nothing to our power, for if some other order or writ might be resorted to it would be *ejusdem generis* with certiorari." (Italics ours.)

So it is the contention of the appellant Arthur Gooch in the case at bar that the general words "or otherwise" following the specific words ransom or reward must be read in connection therewith and means acts of a kindred nature that imports a financial gain on the part of the kidnapper. If the words "or otherwise" need be given a meaning that meaning can be found in such acts as extortion, robbery, sale or blackmail, and we believe that Congress had just such acts in mind when the words "or otherwise" were added in the amended statute because these acts could probably be given an *ejusdem generis* construction with ransom or reward.

Judge Sanborn, while a Justice of the 8th Circuit Court of Appeals, had occasion to write exhaustively on this rule in the case of *First National Bank of Annamoose* v. *United States of America,* 206 Fed. 374, 46 L. R. A. (N. S.) 1139. The first two paragraphs of the syllabi read as follows:

> (1) "A penal statute which creates a new crime and prescribes a punishment for it, must *clearly state* the persons and acts denounced. A person who, or an act which, is not by the *express terms or plain meaning of the law,* clearly within the class of persons or within the class of acts it denounces, will not sustain a conviction under it.
>
> (2) "The rule that where general words follow the enumeration of a particular class of persons or of acts, the general words should be construed to apply to persons or acts of the same general nature or class as

those enumerated, is especially applicable to statutes defining crimes and regulating their punishment."

In the course of his opinion Judge Sanborn expressed himself as follows:

"The statute creates and denounces a new offense. A Penal statute which creates a new crime and prescribes the punishment must clearly state the persons or acts denounced. A person who, or any act which, is not by the express terms of the law clearly within the class of persons or within the class of acts it denounces, will not sustain a conviction thereof. One should not be punished for a new offense unless he and his act fall plainly within the class of persons or the class of acts contemplated by the statutes. An act which is not clearly an offense by the expressed will of the legislative department before it was done, may not be lawfully or justly made so by construction after it is committed, either by the interpolation of expressions or by the expunging of some of its words by the judiciary. *Ex post facto* construction is as vicious as *ex post facto* legislation. To determine that an act is within the intention of the statute, its language must authorize us to say so. It would be dangerous indeed to carry the principle that an act which is within the reason or mischief of a statute is within its provisions so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of *kindred character* with those that are enumerated. (Italics ours.)

"The case must be a strong one indeed which would justify a court in departing from the plain meaning of words in search of an intention which the words themselves did not suggest." (*United States* v. *Wiltberger*, 5 Wheat. 75, 96.)

Following the language of Judge Sanborn's opinion, we find him saying:

"It is only when a penal statute clearly and plainly subjects parties and acts to its denunciation, that they

may be lawfully punished thereunder. *If it is doubtful whether or not it includes them, they ought to be and must be exempt* from criminal prosecution thereunder." (Italics ours.)

A case that we would stress in support of our position is one of much prominence and which is well known to this Court, and was rendered shortly after the enactment of what is known as the White Slave Traffic Act, viz, *Caminetti* v. *United States*, 242 U. S. 470, 61 L. Ed. 442, L. R. A. 1917 F. 514. This case was considered together with the case of *United States* v. *Maury L. Diggs* and *United States* v. *L. T. Hayes.*

The majority opinion was concurred in by five justices, while Justice White, Clarke and McKenna dissented; one Justice not sitting. It was earnestly urged by the appellants in these cases that the White Slave Traffic Act, as was indicated by the title of the act itself, was only intended to cover commercialized vice. Evidence was before the Court that that was in fact the intent of Congress; but the majority opinion held that the language used was so clear and unequivocal that they must give the ordinary construction and meaning of the words so used, and held that the verdicts of the trial court were warranted by the law and the facts. The Court, however, found that the facts disclosed that the defendants had been guilty of transporting in interstate commerce females for the purpose of prostitution, or of acts involving illicit sexual relations. The majority opinion quotes from *United States* v. *Bitty*, 208 U. S. 398, as follows:

> "It may be admitted that in accordance with the familiar rule of *ejusdem generis*, the general purpose referred to by the words 'or any other immoral purpose' must be one of the same general class or kind as the particular purpose of 'prostitution' specified in the clause of the statute."

Justice McKenna, in writing the dissenting opinion, called attention to the case of *Church of Trinity* v. *United States*, 143 U. S. 457, 36 L. Ed. 226. This case came to the Supreme Court of the United States for construction of an act of Congress which made it unlawful for any one in any of these United States, "to prepay transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States under contract or agreement, to perform labor or *service of any kind* in the United States, its territories, or in the District of Columbia." The facts in this case disclosed that Trinity Church made a contract with one E. W. Warren, a resident of England, to remove to the City of New York and enter its service as Rector or Pastor. The church was proceeded against under the act, and the circuit court held that it applied, and returned judgment accordingly, 36 Fed. 303. Justice McKenna goes on to say that it would be observed that the language of the statute was very comprehensive, fully as much so as the language of the act under review, having no limitation whatever from the context. The Supreme Court in the *Trinity Church* case reversed the judgment of the circuit court and in an elaborate opinion by Mr. Justice Brewer declared that:

> "It is a familiar rule that a thing may be within the letter of a statute, and yet not within the statute, because not within its spirit or within the intention of its makers."

We here direct specific attention to the phraseology of the act under construction, "to perform labor or service of any kind." If we understand the facts in this case correctly, the contract had with Warren was for his services as a rector of the church. It might be inconceivable altogether to the layman, and perhaps not altogether free from

difficulty to a lawyer, to follow the logic of this opinion, because there appears to be no ambiguity in the language used by the enacting body. This is a case indeed where the thing was within the letter of a statute and yet not within the statute, because not within its spirit or within the intention of its makers.

It may be contended by the government that inasmuch as the words "or otherwise" were added to the words "ransom or reward" in the amended statute in the case at bar, that those words should be given an enlargement of purpose. Congress evidently believed that cases would arise in which the kidnapped person might not be held for ransom or reward but might be held for some similar purpose such as extortion, blackmail, robbery or sale, and the words were added, in our opinion, to include these classes of cases. The rule of *ejusdem generis* applies, however, to the words "or otherwise," regardless of the fact that they were added in the amended statute. If Congress had not so intended, it would have been very easy in passing the amended statute to strike out the words "ransom or reward" altogether, and insert "for any purpose whatsoever."

This Court has passed on this exact point in the case of *United States* v. *Bitty*, 208 U. S. 393, 52 L. Ed., 543, 28 Sup. Ct. Rep. 396.

The statute passed on in that case was a prohibition against the importation of alien women or girls. The first statute prohibited the importation of any alien woman or girl into the United States for the purpose of *prostitution*. The second or amended statute repeated the words and added *"or for any other immoral purpose."* It was contended by the government that the rule of *ejusdem generis* did not apply, but the Court said:

> "Now the addition in the last statute of the words 'or for any other immoral purpose' after the word 'pros-

titution' must have been made for some practical object * * * In forbidding the importation of alien women 'for any other immoral purpose' Congress evidently thought that there were purposes in connection with the importation of alien women which, as in the case of importation for prostitution, were to be deemed immoral. *It may be admitted that, in accordance with the familiar rule of ejusdem generis, the immoral purpose referred to by the words 'any other immoral purpose' must be one of the same general class or kind as the particular purpose for prostitution.*" (Italics ours.)

In that case the accused was charged with the importation of an alien woman for the purpose of concubinage, and it must be agreed that the word concubinage is similar in import to the word prostitution, in fact embraces prostitution.

We may look to the history of the times for interpretation of statutes. The first law enacted by Congress covering the offense of kidnapping was known as the Lindbergh Law, the Act of June 22, 1932, and we can reasonably surmise that when that statute was brought into life it was the intent of Congress to prohibit kidnapping of persons who would be held for ransom or reward. The Act of May 18, 1934, which was enacted after the celebrated Urschel kidnapping case, was enacted to make the penalty for kidnapping more severe. It authorized, where the person kidnapped is harmed, the imposition of the death penalty. If, as we anticipate, it will be urged by counsel for appellee, that the words "or otherwise" are to be all-expansive and not used in a restricted sense, we must assert that the words "ransom or reward" are meaningless, and it would be necessary for the court, in order to agree with such a position, to expunge the words "ransom or reward" from the act. The words "ransom or reward" as used in this

act import some pecuniary consideration, or payment of something of value. In support of this argument, we go to Webster for the definition of the two terms:

Ransom: (1) Release from captivity or bondage by payment. (2) The money paid for the release of a person from capture, bondage or slavery, or for the redemption of goods captured by an enemy.

Reward: (1) Recompense or equivalent return for good or evil done, for kindness, for services, for something lost, and the like; requital.

If ours is a wrong premise here, then it may be urged with logic that the act is sufficiently comprehensive to cover almost any act where parties are transported in interstate commerce, and would even cover an offense within the provisions of the White Slave Traffic Act. For purposes of illustration, assume that a person in the State of Oklahoma, by persuasive letters induced a female from the State of Texas to come to Oklahoma with the intent, upon the part of the male in Oklahoma, to induce the female to commit acts of prostitution. Would he not be guilty under the provisions of the act here under construction? We note that among the terms used in this act are "inveigled" and "decoyed." If we understand correctly, these terms do not imply force or violence. It will not be urged that this act was intended by Congress to repeal the White Slave Traffic Act; but that would be its effect if we are not to apply the rule of *ejusdem generis* to the words "or otherwise" used in the statute. In the *Caminetti* case it was held that the words "or any other immoral purpose" covered only cases of prostitution or similar acts; and we say that these words are more, or at least clearly as comprehensive as the words "or otherwise." Let us not forget that three of the justices in that case held that the words "or any other immoral purpose" were even more restric-

tive, and applied only to commercialized prostitution. We feel that we cannot too urgently emphasize the fact that to give the construction to this act that counsel for appellee must necessarily urge in order to sustain the conviction, would mean to disregard the opinions held in many authorities cited, and to hold quite contrary to the law as established. One must indulge in a great stretch of imagination to hold that when, as in this case, one transports a person from one State to another to prevent arrest, it comes within the scope of this statute. Congress had no such intention in mind.

If we may be permitted to use the vernacular, we would say that Gooch and Nix got hold of a live wire and could not turn loose. No thought entered their minds to hold the officers for ransom or reward, or kindred purpose; but what they had in mind was to prevent arrest. It can not be said that they came within the scope of the statute by holding the officers for ransom or reward, or for the purpose of receiving any pecuniary consideration, or a consideration of value, or for any similar purpose. If these men had kidnapped the officers, and had brought them into Oklahoma for the purpose of extortion, or for the purpose of robbing them, we believe it could, under such circumstances, have been well held that they committed an offense under the Act of May 18, 1934.

We earnestly urge consideration of the many other authorities hereafter cited for the reason that they are, we believe, directly in point. We read from the case of *Fasulo* v. *United States*, 272 U. S. 620, 629:

> "In *United States* v. *Chase*, 135 U. S. 255, the indictment was under Section 1 of the Act of July 12, 1876, c. 186, 19 Stat. 90, declaring 'every book * * * pamphlet, picture, paper, writing, *print* or other publication of an indecent character' to be unmailable, and making their deposit in the mails an offense. The

question was, whether to send an obscene letter by mail violated that section. The court held that the letter was not a writing within the meaning of the statute. It said (p. 261):

"We recognize the value of the rule of construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of language in them *which is ambiguous, and equally susceptible of* conflicting construction. But this court has *repeatedly held that this rule does not* apply to instances which are not embraced in the language employed in the statute, *or implied from a fair interpretation* of its context, even though they may involve the same mischief which the statute was designed to suppress." (Italics ours.)

In the case of *United States* v. *Sheldon*, 2 Wheat. 119-120, 4 L. Ed. 199, a statute was under consideration that read in part as follows:

"That if any citizen of the United States or person inhabiting same shall transport, or attempt to transport, overland or otherwise, in any wagon, cart, sleigh, boat *or otherwise* naval or military stores, arms or munitions of war, or any article of provision from the United States to Canada, etc., the wagon, cart, sleigh, boat or the thing by which the said articles are transported or attempted to be transported, together with the articles themselves, shall be forfeited, and the person in aid of or privy to the same shall forfeit to the United States a sum equal in value to the wagon, etc., or thing by which the said articles were transported, and shall moreover be considered as guilty of a misdemeanor and liable to fine and imprisonment."

The Court unanimously held that live fat oxen were articles of provision and munitions of war within the intent of the statute quoted. The proof disclosed that the oxen were driven overland from the United States into Canada. It was contended by the Attorney General of the United

States that the words "or otherwise" contained in the phrase "in any wagon, cart, sleigh, boat *or otherwise*" were sufficient to bring the act of driving the cattle overland into Canada within the statute but this Court said:

> "It may be admitted that the mischief is the same whether the enemy be supplied with provisions in the one way or the other; but this affords no good reason for construing the penal statute by equity so as to extend it to cases not within the correct and ordinary meaning of the expression of the law."
>
> "If it were impossible to construe the words 'or otherwise' except in the way contended for on the part of the United States, there would be some reason for giving that interpretation to them. But it has been shown that this is not the case."

While we believe unquestionably that it was the intent of Congress by the statute under construction in that case to prevent the furnishing of provisions and munitions of war to the enemy, under such circumstances as exist in that case, the Court had to give such construction to the statute as was permitted by the rule of *ejusdem generis*. The cattle, the provisions of war, were in fact transported when they were driven overland. At least they were moved from one place to another, which we would construe as a transportation. The Court said that the mischief was the same, but that fact did not afford any reason for construing this penal statute by equity. To the same effect see *United Sates* v. *Bevans*, 3 Wheat. 336, 390.

The 9th Circuit in the case of *Koth* v. *United States*, 16 F. (2d) 59, had occasion to apply the rule in passing on the word "place" when preceded by the words "in room, house, building, boat, structure or vehicle." The defendant in that case had been indicted for keeping, maintaining and operating a still on his premises, but not located in

any house or building. In the course of its opinion the court expressed itself as follows:

> "It is clear that the word 'place' does not refer to a city, town or township, and must be determined in the connection of its use and under the rule of *ejusdem generis*. The word 'place' in this section, following the special words 'room, house, building, boat, vehicle or structure', is limited to things of the same kind, something with walls and defining tangible limits, as described by the special words."

In *Griffith* v. *United States,* 261 Fed. 159 (C. C. A.), a defendant was charged with transportation of a female "for the purpose of prostitution and debauchery and for other immoral purposes." The court instructed the jury in part as follows:

> "I charge you that in this case there is no evidence tending to show that this defendant caused this girl, Katharine, to be transported for the purpose of debauchery or to become a prostitute, but only under that clause 'for some immoral purpose'."

The defendant urged that under this instruction the indictment was defective in not alleging the precise nature of said immoral purpose, and that the judge authorized the jury to find the defendant guilty if the intended immoral purpose of the transportation were other than sexual immorality.

The court, at page 160 of the opinion, delivered itself as follows:

> "A state of facts is easily conceivable where such a charge might have been harmful; for instance, if there was evidence that one of the immoral purposes of the transportation was the perpetration of an offense as wholly unrelated to debauchery and prostitution as is, say, robbery or blackmail; in such case it might be inferred from the charge that a conviction might be

had if the jury found such other immoral purpose to have been the purpose of the transportation. Without deciding the proposition, it may be said to be at least doubtful whether the statute was intended to cover transportation for immoralities other than those of a sexual nature."

We have noted that this Court has decided this question in *Caminetti* v. *United States, supra.*

In *Pa. Steel Co.* v. *Washington and Berkeley,* 194 Fed. 1011, 1017, a contract was under construction that read in part as follows: "by reason of the omission or negligence of this defendant's agents or its workmen *or otherwise.*" The court proceeded to say:

"Do these words 'or otherwise' broaden the scope of the steel company's liability to include all acts of negligence and omission on the part of the bridge company, its agents and employees that might have been committed by it or them before the steel company's contract, or must they be limited by the rule of *ejusdem generis* requiring that in the construction of statutes, contracts and other instruments, where enumeration of specific things is followed by a general word or phrase, the latter is held to refer to things of the same kind as those specified? This rule is well recognized and established."

Then follows a long list of authorities. The court continued as follows:

"It has been very recently applied by the Circuit Court of Appeals for this circuit in *Hickman* v. *Cabot,* 183 Fed. 747, where a clause 'if by reason of fire, explosion or other cause' in a contract was held not to authorize the shutting down of his carbon factory by a contractor for natural gas to be used therein for the cause that its operation must be at great loss, but must be restricted to causes similar in character to fire and explosion. In view of the principles so recently enun-

> ciated in this case, and by this court, whose opinions are binding upon me, I feel compelled to restrict the words 'or otherwise' used here in this contract to acts of negligence of the steel company itself, its agents, its workmen or ones of like character arising in its carrying out its contract in the erection of the superstructure."

See also *Mo. Pac. Ry. Co.* v. *United States,* 211 Fed. 893 (C. C. A. 8th).

In *Lowenstein* v. *Fidelity & Casualty Co.,* 88 Fed. 474, the first and third paragraphs of the syllabi set out the facts and the law applicable in construing the words "or otherwise" used as general term preceded by specific terms.

> (1) A clause declaring that the insurance does not cover injuries or death "resulting from poison or anything accidentally *or otherwise* taken, administered, absorbed or inhaled" does not exempt the insurer from liability for death caused by involuntary and unconscious inhalation of illuminating gas, accidentally taken while asleep.
>
> (2) The words "or otherwise" as used in the above provision do not qualify the act of inhaling but are used in connection with the preceding word "accidentally" and mean an injury of a *kindred character.* (Italics ours.)

See also

Duffy v. *Central R. R.,* 268 U. S. 55, 63.
City of Salem, 31 Fed. 616-618.

It will be noticed that the above cases are civil in nature. How much more reason for the rule being applied to such a statute as is now before this court. The statute under construction is highly penal in its nature. A person's life may be exacted under its terms and it is the contention of the defendant that before this extreme penalty may be in-

curred under its provisions the act complained of must come clearly and plainly within its provisions; and in case there is any doubt as to whether or not the defendant's act is embraced within the statute, then that doubt must be resolved in his favor.

The statute provides that the "kidnapped * * * person must be held for ransom or reward or otherwise." Construing the words "or otherwise" according to the settled rules of construction as cited under the authorities above, the kidnapped person must be held for "ransom, reward," or for some similar purpose of a kindred nature such as robbery, extortion, blackmail or sale; for a reason that imports pecuniary gain on the part of the kidnapper.

The Montana Supreme Court had occasion in *Forrester et al.* v. *Boston & Me. Consol. Copper & Silver Min. Co. et al.*, 21 Mont. 544, 55 Pac. 229, 235, to construe the words "or otherwise," when preceded by specific words denoting pecuniary consideration.

That part of the act applicable to the case at bar provided:

> "If on canvassing the votes it shall be found that at least two-thirds of all the shares of the capital stock of such corporation have been voting in favor of selling, leasing, mortgaging *or otherwise disposing* of a given piece or the whole of said mining property. * * * (Italics ours.)

One of the questions passed on by the court was whether or not the words "or otherwise disposing of" were broad enough to cover an exchange of the corporation's stock for that of another corporation. In holding that these words must be restricted by the words that preceded them the court said:

> "Manifestly, the transfer proposed lacks an element necessary to constitute a sale, namely, a pecuniary

consideration. To constitute a sale, there must, as a general rule, be a consideration in money. The proposed transaction is, at best, merely an exchange; and the defendants' claim that the expression 'or otherwise dispose of,' used in section 492, operates to confer upon the corporation the power to exchange as well as to sell the entire property of the corporation without the consent of every stockholder therein. We do not think the general enumeration of the powers by the terms 'sell, lease, mortgage, or otherwise dispose of' operates either to confer upon mining corporations the power to exchange, or as a recognition of it as already possessed by other industrial corporations. The words 'or otherwise dispose of' *are not sufficiently* vigorous to justify the construction urged by defendants; and in so far as they may seem sufficiently significant to require their application to powers other than those specifically named, they may be satisfied by reference to the right to assign for the benefit of creditors, to hypothecate, or pledge, or possibly even the right to remove or destroy, the mills, smelters, concentrators, or reduction works, rather than by allowing them, by mere implication, to create or recognize a power *radically different from those particularly specified.* It must be admitted that the sale of the assets and the distribution of the proceeds is vitally different from the enforced exchange of those assets for the capital stock of a foreign corporation; * * *'' (Italics ours.)

The words "ransom or reward" are totally unrelated and foreign to the purpose charged to the defendant in this case. It would be difficult to imagine a purpose further removed from the statute than "to prevent an arrest."

It is an elementary rule of construction, as pointed out by Judge Sanborn, in *First National Bank of Annamoose* v. *United States, supra,* that all the words of a statute must be given effect if possible.

In the case of the *City of Salem,* 31 Fed. 616, 618 a statute was under consideration which used the words "or others" following the specific words "mechanics, tradesmen." The court in construing the meaning of the words "or others" said:

> "And first, this statute gives a lien only to mechanics, tradesmen, *or others* for labor or materials. The phrase "or others" is a general one, immediately following the enumeration of particular cases,—"mechanics" and "tradesmen",—and is therefore applicable only to other persons in the same category or calling. The statute ought not to be construed to include *every* person who furnishes material or performs labor on a vessel, because, if that was the intention of the legislature, it was very easy to have said so."

Perhaps the most recent decision of this Court illustrative of the points now before the Court is the case of *McBoyle* v. *United States,* 283 U. S. 25. In that case the defendant McBoyle was indicted under the National Motor Vehicle Theft Act for transporting an airplane from Ottawa, Illinois, to Guymon, Oklahoma, knowing said airplane to have been stolen. The defendant, McBoyle, was convicted in the District Court and his conviction was affirmed by the Circuit Court of Appeals for the Tenth Circuit. The case came to this Court by certiorari and was reversed. The syllabus sets out the facts and is as follows:

> "The National Motor Vehicle Theft Act, U. S. C. Title 18, Sec. 408 which punishes whoever transports, or causes to be transported in interstate or foreign commerce a motor vehicle knowing it to have been stolen, and which defines 'motor vehicle' as including 'an automobile, automobile truck, automobile wagon, motor cycle or any other self propelled vehicle not designed for running on rails' does not apply to aircraft."

Mr. Justice Holmes wrote the opinion of the Court and in the course of his opinion he said:

> "The question is the meaning of the word 'vehicle' in the phrase 'any other self-propelled vehicle not designed for running on rails.' No doubt etymologically it is possible to use the word to signify a conveyance working on land, water or air. * * * But in everyday speech 'vehicle' calls up the picture of a thing moving on land. * * * So here the phrase under discussion calls up the *popular picture*. For after including automobile truck, automobile wagon and motor cycle, the words 'any other self propelled vehicle not designed for running on rails' still indicate that a vehicle in the popular sense, that is a vehicle running on land, *is the theme*. It is a vehicle that runs, not something, not commonly called a vehicle that flies." (Italics ours.)

Applying the reasoning of the learned justice in the above case to the case at bar there is no question but that the word "kidnap" has a definitely accepted popular meaning. The very word itself imports holding for ransom or reward for release of the kidnapped person. Justice Holmes in the *McBoyle* case went on to say:

> "Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear. When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land, the statute should not be extended to aircraft, simply because it may seem to us that a similar policy applies or upon the speculation that, if the legislature had thought of it, very likely broader words would have been used."

So we say in the case at bar that it would never have occurred to the common world to use the words of Justice Holmes, that the act of Gooch and Nix in transporting the officers across the state line there to be released immediately was a violation of the "Lindbergh Law" or that a man's life could be forfeited for such an act. This is the only instance that we know of that a person has been prosecuted and convicted under this act where the kidnapped person was not held for ransom or reward or for a similar purpose. In the very recent case of *People* v. *Tanner*, 44 Pac. (2d) 324, 332, the Supreme Court of California had occasion to remark:

> "Gain has always been the motive of kidnappers."

And we believe that that is what Congress had in mind and all that it had in mind when this act was passed and that it was not the intention of Congress to make it possible to hang a man for such an offense as charged here.

As was well said by this Court in the case of *U. S.* v. *Brewer*, 139 U. S. 278, 288:

> "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts to avoid. * * * Before a man can be punished, his case must be *plainly* and *unmistakably* within the statute." (Italics ours.)

Counsel for the government in their brief filed in the Circuit Court of Appeals set forth the committee reports in Congress relative to the kidnapping law under construction in the case at bar and cite authorities to the effect that the courts are permitted to consider such reports in ascertaining the intentions of Congress. The reports of committees referred to in the government's brief are taken from their brief in the Circuit Court of Appeals and are as follows:

"On page 37 of Crime Laws of the 73rd Congress, we find Report No. 534 from the Judiciary Committee of the

United States Senate accompanying the amendment to the kidnapping statute in question. The report by Mr. Stephens of the Committee is as follows:

"Mr. Stephens, from the Committee on the Judiciary, submitted the following

Report.

(To Accompany S. 2252.)

"The Committee on the Judiciary, having had under consideration the bill (S. 2252) to amend the act forbidding the transportation of kidnapped persons in interstate commerce, reports the same favorably to the Senate and recommends that the bill do pass.

"The purpose and need of this legislation are set out in the following memorandum from the Department of Justice:

"S. 2252; H. R. 6918: This is a bill to amend the act forbidding the transportation of kidnapped persons in interstate commerce—act of June 22, 1932 (U. S. C., ch. 271, title 18, Sec. 408A), commonly known as the 'Lindbergh Act'. This amendment adds thereto the word 'otherwise' so that the act as amended reads:

"'Whoever shall knowingly transport * * * any person who shall have been unlawfully seized * * * and held for ransom or reward or otherwise shall, upon conviction, be punished * * *.' The object of the addition of the word 'otherwise' is to extend the jurisdiction of this act to persons who have been kidnapped and held, not only for reward, but for any other reason. * * *

"I believe that this is a sound amendment which will clear up border line cases, justifying federal investigation in most of such cases and assuring the validity of federal prosecution in numerous instances in which such prosecutions would be questionable under the present form of this act."

The report of the Judiciary Committee of the lower house of Congress, being Report No. 1457 on pages 38 and 39 of Crime Laws of the 73rd Congress, used the following language:

> "Mr. Sumners of Texas, from the Committee of the Judiciary submitted the following
>
> Report.
>
> (To Accompany S. 2252.)
>
> "The Committee on the Judiciary, to whom was referred the bill, S. 2252, to amend the act forbidding the transportation of kidnapped persons in interstate commerce, after consideration, report the same favorably to the House with amendments with the recommendation that the bill as amended do pass." * * *
>
> "This bill, as amended, proposes three changes in the act known as the 'Federal Kidnapping Act'. First, it is proposed to add the words 'or otherwise, except in the case of a minor, by a parent thereof'. This will extend federal jurisdiction under the act to persons who have been kidnapped and held, not only for reward, but, for any other reason, except that a kidnapping by a parent of his child is specifically exempted."

There is no question but that courts from time to time and under certain conditions have referred to the committee reports as an aid in construing certain statutes where the language used was so uncertain and obscure as to necessitate this measure. We wish to call to this Court's attention the case of *Caminetti* v. *United States*, 242 U. S. 470 as an authority on this proposition. In this case it was shown by the committee reports, the title of the act itself and even by an opinion of the Attorney General that the White Slave Traffic Act was intended to cover only cases of commercialized vice but the Court refused to consider them. The first paragraph of the syllabus reads as follows:

> 1. The name given to a congressional enactment by way of designation or description in the act or the re-

port of the committee accompanying the introduction of the bill into the House of Representatives cannot change the plain implication of the words of the statute.

Mr. Justice Day delivered the opinion of the Court and in the course of his opinion said:

> "Still the name given to an act by way of designation or description, or the report which accompanies it, cannot change the plain import of its words. If the words are plain, they give meaning to the act, and it is neither the duty nor the privilege of the courts to enter speculative fields in search of a different meaning. Reports to Congress accompanying the introduction of proposed laws may aid the courts in reaching the true meaning of the legislature in cases of doubtful interpretation (citations). But as we have already said, and it has been so often affirmed as to become a recognized rule, when words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports *accompanying their introduction*, or from any extraneous source. In other words, the language being plain, and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent." (Italics ours.)

And in the case of *Mackenzie* v. *Hare*, 239 U. S. 299, 308; 60 L. Ed. 297, 300, this Court held to the same effect. Mr. Justice McKenna delivered the opinion in the course of which he said:

> "Whatever was said in the debates on the bill or in the reports concerning it, preceding its enactment or during its enactment, must give way to its language; or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and expressed by its words, and it makes no difference that in discussion some may have been given more

> prominence than others, seemed more urgent and insistent than others, presented the mischief intended to be remedied more conspicuously than others."

The White Slave Act makes it an offense to transport in interstate commerce a female for the purpose of "prostitution, debauchery or for any other immoral purpose" and the question arose in the *Caminetti* case as to the meaning of the words "or for any other immoral purpose." The Court in the *Caminetti* case, *supra,* held that the words "or for any other immoral purpose" had been defined in the case of *United States* v. *Bitty,* 208 U. S. 393, and that:

> "this definition of an immoral purpose was given prior to the enactment of the act now under consideration, and must be presumed to have been known to Congress when it enacted the law here involved."

The same rule was invoked in the case of *E. M. Asbury et al.* v. *Commissioners of the Town of Albemarle,* 78 S. E. 146, 44 L. R. A. (n. s.) 1189, where the Supreme Court of North Carolina said:

> "Another rule applicable to the construction of statutes is, that, when they make use of words of definite and well-known sense in the law, they are to be received and expounded in the same sense in the statute."

So in the case at bar it is the contention of the appellant that as the words "or otherwise" following a specific enumeration have been held by the Supreme Court of the United States, by the Circuit Court of Appeals and by the District Courts of the United States, by the Supreme Courts of most states as set forth in the brief of appellant, to mean acts of a similar nature or of a kindred character Congress must be presumed to have known the judicial definition of these words and to have used them accordingly.

Nor do we agree with the sweeping construction of the committee reports placed on them by Counsel for the Government. We set out the applicable parts:

> "* * * The object of the addition of the word 'otherwise' is to extend the jurisdiction of this act to persons who have been kidnapped and held not only for reward, but for any other reason * * * I believe that this is a sound amendment which *will clear up border line cases,* justifying federal investigation in most of such cases and assuring the validity of federal prosecution in *numerous instances* in which such prosecutions would be questionable under the present form of this act."

Why were the words "border line cases" used in the report if the committee intended the words "or otherwise" to embrace every purpose? If these words are to be used in their unrestricted sense there could be no "border line cases" because the words "or otherwise" unrestricted by the specific words "ransom or reward" would include *all* cases. This contention and construction is substantiated by the words *"numerous instances"* for the same reason set out above. If these general words are to include all purposes for which a kidnapped person is held then the validity of federal prosecutions is assured in *all instances.* It would seem that the committee realized that cases would arise in which the kidnapped person was held not precisely for ransom or reward but for some related purpose and it was their intention to cover such instances by the use of the words "or otherwise." We believe that the committee in using the words "not only for reward but for any other reason" meant any other reason similar to ransom or reward and the latter part of their report indicates that such was their intention. If this were not true it would have been very easy to strike out the words "ransom or reward" and to have substituted the words "for any purpose what-

soever" in their stead, but these words were left intact and in our opinion govern the meaning and limit the scope of the general words "or otherwise."

On the same day that the amended kidnapping statute now before this Court for construction was approved the following statute was also approved (May 18, 1934, Title 18, U. S. C., Sec. 408d):

> "*Whoever, with intent to extort from any person, firm, association, or corporation any money or other thing of value,* shall transmit in interstate commerce, *by any means whatsoever,* any threat (1) to injure the person, property, or reputation of any person, or the reputation of a deceased person, or (2) to injure the person, property, or reputation of any person, or (3) to accuse any person of a crime, or (4) *containing any demand or request for a ransom or reward for* the release of any kidnapped person, shall upon conviction, etc., * * *."

The above act and the amended kidnapping act were both before Congress at the same time and were both approved on the same day (May 18, 1934).

> "It is a well established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times and contain no reference to one another" 59 C. J. 1043.

> "The rule that statutes in *pari materia* should be construed together applies with peculiar force to statutes passed at the same session of the legislature, especially where they are passed or approved *on the same day*" * * * 59 C. J., p. 1053.

The above act when read in connection with the kidnapping act goes far in shedding light on the meaning of the

latter. It will be seen that the applicable parts of this act, as italicized above contemplate a kidnapping in its true sense and there is no indication of punishing an act such as is charged to the defendant which in reality is nothing more nor less than simple false imprisonment punishable under the state laws.

In view of the attitude taken by counsel for the Government relative to the meaning of the committee reports accompanying the amended kidnapping act it is interesting to scan the report that accompanied the act set out above (Page 34 of Crime Laws of 73rd Congress.)

"Mr. Stephens from the Committee on the Judiciary, submitted the following

Report.

(To Accompany S. 2249.)

"The Committee on the Judiciary having had under consideration the bill (S. 2249) applying the powers of the Federal Government under the commerce clause of the Constitution, to extortion by means of *telephone, telegraph, radio, oral message or otherwise,* reports the same favorably to the Senate and recommends that the bill do pass.

"The purpose and need of this legislation are set out in the following memorandum from the Department of Justice.

"S. 2249 H. R. 6915, a bill applying the powers of the Federal Government under the commerce clause of the Constitution, to extortion by means of telephone, telegraph, radio, oral message *or otherwise.*

"This bill supplements the Patterson Act (Act of July 8, 1932, c. 464; Sec. 1 U. S. C. Title, 18 Sec. 338a) which makes it a Federal criminal offense to transmit threats through the mails with intent to extort any money or other thing of value. Realizing the effectiveness of the Federal Government's investigating

agencies criminals are purposely refraining from sending extortion letters through the mails, using instead the telephone, telegraph, radio and other means of conveyance. This proposed bill is virtually an amendment of the Patterson Act, based on the Federal power over interstate commerce, to prevent this evasion of that act."

It will be seen that the bill as originally drawn forbade the transmission in interstate commerce of extortion notes, etc., by means of *telephone, telegraph, radio, oral message or otherwise.* And the title of the act finally passed uses these words. Now on page 8896, Congressional Record issue of May 11, 1934, we find the following language in the statement of the managers on the part of the House relative to said bill:

"* * * The Senate bill provided that the penalties of the act shall apply to anyone who 'shall transmit an extortion message in interstate commerce by *telephone, telegraph, radio,* or *oral message,* or by any other means whatsoever." The House *STRUCK OUT THE WORDS OF LIMITATION* to make the act apply to 'anyone who shall transmit such threat in interstate commerce *BY ANY MEANS WHATSOEVER."* The Senate receded. * * *"

So it would appear that Congress was fully aware of the construction that would be placed on the words "or otherwise" in the kidnapping law for the reason that in the above act they struck out these words and substituted in their place *"by any means whatsoever"* and it is the contention of the appellant that had Congress intended to make an act similar to the one now before this Court a violation of the kidnapping statute it would not have used the words "ransom, reward or otherwise" but would have used instead the words *"and held for any purpose whatsoever"* and the fact that under parallel circumstances as they

existed in the extortion statute set out above this precise thing was done adds weight to our contention. The great majority of members in both the Senate and House are attorneys by profession and it is presumed that they were familiar with the construction that has been placed on the words "or otherwise" by the courts, and that these words were used accordingly.

There was apparently very little discussion of the amended kidnapping law when it was on the floors of Congress. The following citations are all that we have been able to find where the act is mentioned, in the Congressional Record.

Issue of May the 5th, 1934, pages 8344 et seq.;
" " " " 11th, 1934, pages 8895 et seq.;
" " " " 14th, 1934, pages 9031 et seq.;
" " " " 15th, 1934, pages 9159 et seq.;

In the issue of May 11th, 1934, page 8895, the managers of the House take up the amendments proposed one by one and discuss them but the addition of the words "or otherwise" drew no comment one way or the other. It is not even mentioned. In discussing the first amendment which includes the addition of the words "or otherwise" the statement did say:

> * * * All the amendments of the House are agreed to. The first amendment excludes from the operation of the act forbidding the transportation of kidnapped persons in interstate commerce the technical case of a minor "kidnapped" by a parent thereof * * *

Contention of the Government that the exception in the statute specifically exempting a parent from the provisions of its terms explains the purpose of the statute we believe to be without merit. Counsel apparently are contending

that it would be impossible for one spouse to kidnap the child and to hold it from the other spouse for the purposes set forth in the statute as those purposes are construed by the appellant in this case. We believe that Congress realized that cases might arise in which this exact circumstance existed but it felt that filial affection would prevent any harm to the kidnapped child if the demands were not met by the other spouse, hence the exception.

> "• • • While an exception may properly be considered in ascertaining the true meaning of a statute, it cannot put into a previous provision something which was not there before." 59 C. J. 1092.
>
> "An exception relates only to that to which it is made, and can exclude nothing which was not contained therein before the exception was made." *Batcheller-Durkee* v. *Batcheller*, 97 A. 378, 39 R. I. 45, 61, L. R. A. 1916E, 545.

Then too:

> "The offense of kidnapping a child cannot be committed by the person having the right to the custody of such child such as the father, or the mother or the guardian of a child." 35 C. J. 907.

The above rule would not apply if one spouse had been given the custody of the child by judicial decree to the exclusion of the other. And under the authorities above we contend that the exception cannot place something in the act here involved not contained therein before the exception was made. Without the exception a parent could have been punished for kidnapping his child and holding the child for ransom, reward or for a similar purpose. The exception merely exempted the parent from the terms of the statute. Certainly it cannot be said to have broadened the scope of the statute itself.

Counsel for the Government may urge that even though this Court restricts the meaning of the words "or other-

wise" to include only acts related to "ransom or reward" that the defendant is guilty because he received a "reward" by preventing his arrest.

The word "reward" has a definitely accepted meaning and the rule is elementary that courts will not search for hidden or obscure meanings in a word that is commonplace and in ordinary use. In the case of *Kircher* v. *Murray*, 54 Fed. 617, 624, the word reward has been defined as:

> "A sum paid for the performance of some specific act to some person or persons."

May it not be logically urged that that was the definition Congress had in mind when this word was used? Then too the word reward is associated with the word ransom in the statute and if there is any doubt concerning its meaning as used in the statute the word ransom may be looked to as an aid.

Before concluding this brief we wish to earnestly commend to this Court's attention the fact that the indictment alleges that the appellant Gooch kidnapped and held the officers for the purpose of preventing his arrest in the State of Texas. After the men crossed the State line could it be logically urged that Gooch was still holding the officers to prevent his arrest in the State of Texas? They were in Oklahoma at that time and of course it was necessary that Gooch carry the officers out of Texas before the offense was completed. Yet when he entered Oklahoma with the officers, certainly he could not be said to be holding them at that time in order to prevent his arrest in the State of Texas because they were not in Texas. The moment he entered Oklahoma he may have been holding the officers for some purpose but certainly he could not be holding them for the purpose of preventing his arrest at Paris in the State of Texas. The statute provides that whoever transports any person who has been unlawfully seized, kidnapped, etc., in

interstate or foreign commerce *and holds* them for ransom or reward or otherwise shall be punished, etc. Conceding the kidnapping, and transportation into Oklahoma, how can it logically be urged that after they reached Oklahoma the officers were held to prevent Gooch's arrest at Paris in the State of Texas? As we read the statute the kidnapped person must be held in the State into which he is transported for one of the purposes set out in the statute. The indictment in this case does not allege that the officers were held for any purpose whatsoever after reaching Oklahoma.

Conclusion.

We earnestly contend that the act charged in this case is not a violation of that statute under which it is drawn and that the words "or otherwise" have been judicially defined and interpreted by this Court prior to the enactment of this statute and that such definition and interpretation must be presumed to have been known to Congress when this act was passed and that to make this statute cover such an offense as charged here it would be necessary to give it a very liberal construction in direct contravention of the principle of law that penal laws must be construed strictly in favor of the accused and if there is any doubt, the doubt must be resolved in his favor.

We respectfully submit that the two questions certified to this Court by the Tenth Circuit Court of Appeals should be answered in the negative.

Respectively submitted,

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